

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

BRIAN SWEET

PETITIONER

VS.

CIVIL ACTION NO. 3:16CV53TSL-JCG

STATE OF MISSISSIPPI

RESPONDENT

ORDER

This cause is before the court on the August 29, 2016 report and recommendation of United States Magistrate Judge John C. Gargiulo, recommending that the court grant respondent's motion to dismiss Sweet's § 2254 petition. Sweet has filed objections to the report and recommendation, and the court, having considered the objections, now concludes that they are not well taken and should be overruled and that the report and recommendation should be adopted as the opinion of the court.

IT IS, THEREFORE, ORDERED that the report and recommendation of United States Magistrate Judge John C. Gargiulo entered on August 29, 2016, be, and the same is hereby adopted as the finding of this court. Accordingly, it is ordered that respondent's motion to dismiss is granted and the petition for writ of habeas corpus is hereby dismissed with prejudice.

It is further ordered that a certificate of appealability is denied because petitioner has failed to demonstrate that "jurists of reason would find it debatable whether [this] court was correct in its procedural ruling," and has also failed to show that

"jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right...."
Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

A separate judgment will be entered herein in accordance with this order as required by Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this 20th day of September, 2016.

/s/ Tom S. Lee
UNITED STATES DISTRICT JUDGE